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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.90 of 2006

Commissioner of Income Tax
Salem .. Appellant/Appellant

Vs.

The Salem Cooperative
Spinning Mills Ltd.,
Kamaraj Nagar,
Salem-14 .. Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 18.8.2005 in ITA No.562/02 for the assessment year 1994-95.

For Appellant : Mr.Narayanaswamy

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.562/02 dated 18.8.2005.

2. The Revenue is the appellant. The assessee is a Cooperative society engaged in the business of spinning mill. They have filed their return for the assessment year 1994-95. Their claim with regard to the expenditure towards remodelling of the generator as Revenue in nature, was disallowed by the assessing officer, who was of the opinion that replacement of old by new machinery cannot be treated as revenue expenditure and allowed depreciation. The expenditure was treated as capital expenditure. Further the assessing officer disallowed the contribution made by the assessee towards ESI on 21.4.1994 on the ground that the same was not made within the previous year and the stipulated time. Aggrieved by the said order, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who allowed the appeal, holding

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that the remodelling of the generator is to be treated as revenue expenditure and also allowed the the deduction towards ESI contribution made on 21.4.1994. The Appellate Tribunal allowed the appeal on the issue of replacement of machinery by applying the decision of this Court in 275 ITR 403 and contribution to the ESI on 21.4.1994 by following the decision of this Court in 243 ITR 879.

3. Aggrieved by the same, the Revenue has preferred the above appeal raising the following substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the remodelling of the generator as revenue expenditure.
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the contribution to the ESI on 2.4.1994 is allowable deduction under Section 43B?

4. The question whether the expenditure on replacement of machinery is capital or revenue is not determined by the treatment given in the books of account or in the balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. In the instant case, the Commissioner and the Appellate Tribunal, finding that remodelling of the generator is revenue expenditure, held that the claim of the assessee cannot be disallowed.

5. The Supreme Court in COMMISSIONER OF INCOME-TAX WEST-BENGAL II VS. KALYANJI MAVJI & CO. (122 ITR 49), held that no new asset was brought into existence nor was an advantage for the enduring benefit of the business acquired by the expenditure, and the expenditure was revenue in character. Following the above decision, the Delhi High Court in THE COMMISSIONER OF INCOME-TAX, NEW DELHI VS. DELHI CLOTH & GENERAL MILLS CO.LTD.(131 ITR 641), held that the expenditure incurred on remodelling of furniture was deductible as revenue expenditure.

6. In view of the ratio laid down by the Supreme Court in the decision cited supra, we hold that the expenditure on remodelling of the generator is Revenue expenditure and therefore, the Tribunal was right in allowing the claim of the assessee.

7. With regard to question (2), viz., the Tribunal was right in holding that the contribution to the ESI on 2.4.1994 is allowable deduction under Section 43B, this Court, in the COMMISSIONER OF INCOME-TAX VS. SHRI GANAPATHY MILLS COMPANY LIMITED (243 ITR 879), held that the payments towards provident fund and employees State insurance having been made within the grace time allowed under the relevant statute, those amounts were required to be deducted in the computation of the taxable income of the assessee.

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8. In view of the ratio laid down by this Court in the decision cited supra, we hold that the contribution to ESI is to be deducted in the computation of the taxable income and therefore, the Tribunal was right in allowing the claim of the assessee.

9. In view of the foregoing conclusion, we find no error in the order of the Tribunal and the same requires no interference. Hence, no substantial question of law arises for consideration of this Court. Accordingly, the tax case appeal is dismissed. No costs.

msk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,Income Tax Appellate Tribunal
   Madras Bench "D", Rajaji Bhavan, Besant Nagar, III Floor,
   Chennai-90.

2. The Secretary, Central Board of Direct Taxes, New Delhi.

3. The Commissioner of Income Tax (Appeals), Salem.

4.The Commissioner of Income Tax, Salem.

5.The Deputy Commissioner of Income-tax,
   Special Range, Salem.

1 cc To Mr.N.Muralikumaran, Advocate, SR.5188.

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MS(CO)
RVL 27.02.2006

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